IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 4870 of 2006

Date of decision: 10.10.2006

Darshan Kaur

..... Petitioner.

Versus

Lehmbar Singh and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. R.S. Ghuman, Advocate
for the petitioner.

Mr. Vikas Bahl,Advocate
for respondent No.1.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed against the order dated 15.02.2006 passed by learned Civil Judge (Junior Division), Nawanshahr, vide which the evidence of the plaintiff was closed by order and the case was adjourned to 22.03.2006 for evidence of the defendants.

Learned counsel for the petitioner-plaintiff in the trial court submits that the plaintiff had concluded his entire evidence and only PW1 plaintiff himself and PW3 Shri Kirori Mal were to be cross examined by the defendants. He has referred to the orders passed by the trial Court on 17.02.2005 and 24.05.2005 to show that on these dates Pws were present but could not be cross examined as copies of the affidavits were supplied to the opposite counsel on the first date and on the second date the counsel for the defendants sought an adjournment to cross examine them. He submits that if one opportunity is granted, he would produce the aforesaid witnesses for their cross examination by the defendants.

As against this, learned counsel for the respondent- defendants in the suit, submits that the order was made by the trial Court on 15.02.2006. The present revision was filed on 12.09.2006 after a period of seven months and during this time, defendants have led their entire evidence. He further states that prejudice would be caused if at this stage cross examination is to be permitted. He further states that sufficient opportunities had already been granted to the plaintiff and in fact more than one last opportunity was also granted. Therefore, he submits that this is not a case where any indulgence should be shown to the petitioner. Lastly, he placed reliance upon the provision of Order 17 Rule 1 of the Code of Civil Procedure to contend that the Court cannot adjourn the case for more than three dates. He therefore submits that the present revision petition should be dismissed.

In so far as the first contention raised by the learned counsel for the petitioner is concerned, learned counsel for the petitioner submits that in fact a certified copy of the order dated 15.02.2006 was secured by his counsel from the trial Court on 28.02.2006 itself and even though the petitioner has instructed his counsel to file a revision in this Court against the same yet for the reasons best known to him, no revision was filed. It is only when the petitioner inquired from his counsel in September 2006 that he found out that no revision had been filed. In fact a copy of the revision proposed to be filed was found ready in the brief of the learned counsel, which was produced before me during the course of arguments. In this view of the matter, I am of the opinion that the petitioner cannot be penalized for any lapse on the part of counsel engaged by him. Hence the petitioner

cannot be non suited on this ground. In so far as the apprehension of the learned counsel for the respondent that in case cross examination of the PWs is permitted at this stage, he would be prejudiced, the same can be allayed by issuing an appropriate direction to the trial Court to afford an opportunity to the defendant to lead any further evidence which he may desire after the cross examination of two PWs. Learned counsel for the petitioner has no objection to this course of action being adopted.

In so far as the other contention raised by learned counsel for the respondent relying on the provision of Order 17 Rule 1 of the Code of Civil Procedure is concerned, it may be stated that this is not a case where the trial Court has been adjourning the case from time to time for no good reasons. Rather in the present case, the evidence of the plaintiff was closed by order which order has been challenged by way of the present revision petition. If this Court finds that the order needs to be modified or set aside, the same can be done in the exercise of powers under Article 227 of the Constitution of India.

For the reasons aforementioned, the order dated 15.02.2006 passed by the trial Court is set aside. In the present case, the ends of justice would be met if one opportunity is granted to the petitioner to produce his two witnesses of their cross examination on the next date fixed before the trial Court when they would be cross examined by the defendant. Thereafter the trial Court shall afford one effective opportunity to the defendants to lead any further evidence in defence which they may desire.

October 10 , 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**